

KAZAKHSTAN

TRADE SUMMARY

The United States registered a trade deficit of \$188 million with Kazakhstan in 2001, a decrease of \$117 million from 2000.

Kazakhstan was the United States' 99th largest export market in 2001. In 2001, U.S. goods exports to Kazakhstan were \$163 million, a 31.2 percent increase from 2000. U.S. imports from Kazakhstan were \$351 million in 2001, a decrease of \$78 million (18.2 percent) from 2000.

The stock of U.S. foreign direct investment (FDI) accumulated in 2000 was \$3.9 billion, a 17.1 increase over 1999.

OVERVIEW

Kazakhstan is continuing its transition to a market economy. Significant economic growth over the past two years has made it possible for domestic enterprises to begin accumulating much needed capital. Progress has been made in nurturing the nascent securities market and consolidating gains in pension reform and the banking sector. Key reforms are still underway to modify the trade regime as part of Kazakhstan's efforts to join the World Trade Organization. The U.S.-Kazakhstan Bilateral Trade Agreement, which came into force in 1993, grants reciprocal normal trade relations treatment. A bilateral investment treaty (BIT) came into force in January 1994. Most investment in Kazakhstan to date has been in the oil and gas and minerals sectors.

IMPORT POLICIES

Tariffs and Taxes

Kazakhstan is a member of the Eurasian Economic Community (EAEC), along with Russia, Kyrgyzstan, Belarus and Tajikistan.

Trade among the five EAEC countries is duty-free, but the countries have not yet established a common external tariff. The EAEC is developing coordinated customs procedures that would reduce the cost of transshipment through the EAEC member states of U.S. goods destined for Kazakhstan.

The average weighted import tariff in Kazakhstan is approximately 10 percent. In 2001, the value-added tax (VAT) was reduced from 20 percent to 16 percent. Imported goods are subject to VAT at the time of importation (VAT destination principle), except for oil and oil products imported from Russia, where VAT is applied before export. Kazakhstan plans to adopt the destination principle for VAT application for all imports in the context of its accession to the WTO. In the interim, it has negotiated agreements to this effect with individual Commonwealth of Independent States members, e.g., Kyrgyz Republic, Moldova, and Azerbaijan.

Goods imported for short-term use in Kazakhstan under the temporary import regime can be fully or partially exempt from all duties, taxes and non-tariff regulations. The government has the right to issue a list of goods that cannot be temporarily imported into Kazakhstan. Traditionally, goods not eligible for full or partial duty exemption are food products, industrial wastes, and consumables.

Article 22 of the 1994 Foreign Investment Law exempted from customs duties property imported by a foreign investor for the purpose of contributing it to the charter capital of a "foreign-shared enterprise" (defined as a Kazakhstani legal entity, such as a limited liability company, in which the foreign investor has an ownership interest). After the 1997 amendments to the Foreign Investment Law, only equipment and spare parts for this equipment imported for the charter capital are exempt from customs duties.

Customs Procedures

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The Ministry of State Revenues is again revising the country's customs code. The new draft customs law is scheduled to be introduced into the Parliament during its fall 2002 session. Changes are intended to simplify customs procedures and establish mechanisms to gradually reduce customs tariffs.

Kazakhstan's customs valuation rules, which rely on invoices for valuation, largely conform to the WTO Customs Valuation Agreement. Ministry of State Revenues Order 402, issued in 1999, sets conditional prices for certain imported goods, which conflicts with WTO valuation methodology and apparently also with the valuation principles of the Kazakhstani customs code.

The government continues to discuss automation of customs procedures, but little progress has been made. Starting February 1, 2002, Kazakhstan will institute a "customs audit" procedure to be administered by a private contractor. Under this system, approximately 20 percent of all goods crossing Kazakhstani borders will be inspected. While the government will pay for regular inspections, the declaring party will pay penalties in the event of discrepancies. There are concerns that this system may be viewed as an opportunity to generate revenues by customs officials.

U.S. companies have consistently identified a requirement that they obtain a "transaction passport" to clear imported goods through customs as a significant barrier to trade. This regulation is designed to stem capital outflows and money laundering by requiring importers to show copies of contracts and other documentation to prove the legitimacy and verify pricing of import/export transactions. The practice will retard the growth of trade, since the scope of transactions contemplated in the relevant regulations is very narrow. For example, the regulations allow a maximum

financing term for imports of 120 days, after which time the transaction passport must be closed out. This unnecessarily limits the range of business activity and creates a potential bias towards short term financing in the economy.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Government observance of existing standards, testing, labeling, and certification requirements is uneven. In 1996, the U.S. National Institute of Standards and Technology signed a Memorandum of Understanding with the Government of Kazakhstan to bring Kazakhstan's metrology methods into conformity with international rules and practices.

President Nazarbayev signed two laws, "On Standardization" and "On Certification," in 1999, with a view to bringing these areas into compliance with international standards and practices. However, Paragraph 2 of Article 12 of the Law on Certification requires that all imported products subject to mandatory certification be accompanied by documents identifying the producers, the date of production, the expiration date, storage requirements and the mode of use in both the Kazakh (state) and Russian (officially recognized) languages. The government has accepted placement of Kazakh language stickers on products as compliance with the law, instead of requiring entirely new labels. The government also has issued a fairly wide-ranging regulation exempting pharmaceutical products and several other categories of goods from the Kazakh labeling requirement.

GOVERNMENT PROCUREMENT

Kazakhstan is not yet a member of the WTO Agreement on Government Procurement. Kazakhstan, with the support of the World Bank, is reforming and harmonizing its system of state

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procurement. The State Procurement Agency was established by Presidential decree on December 14, 1998, and the Regulation on the State Procurement Agency was approved on March 26, 1999. This legal structure strengthened the monitoring functions of the State Procurement Agency, improved control systems and provided independence in the selection of methods for high value procurement. The current law does contain provisions whereby domestic producers and small businesses receive preferential treatment during the government procurement process.

U.S.-funded assistance projects are helping Kazakhstan establish a database to assist procurement. American businesses continue to report problems, however, because tender offers are not always publicized and because there is no standardized format for publicized tender offers. Tenders appear in different publications, have varying requirements for the submission of bids, and sometimes do not provide adequate time limits to allow U.S. businesses to prepare and submit bids.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The 1992 U.S.-Kazakhstan Agreement on Trade Relations incorporates provisions on the protection of intellectual property rights (IPR). Kazakhstan has fulfilled a number of its obligations regarding intellectual property under the agreement, but several bilateral commitments remain unfulfilled. As part of its effort to accede to the WTO, Kazakhstan has undertaken steps to bring its intellectual property legislation into compliance with the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Kazakhstan acceded to the Geneva Phonograms Convention in June 2000 and is a member of the

Bern Convention for the Protection of Literary and Artistic Works. However, Kazakhstan has not yet made the necessary changes to its Copyright Law to implement the Bern Convention, particularly with respect to the Bern Article 18 obligation (which is incorporated into the TRIPS Agreement) to provide protection to foreign works that have entered the public domain in Kazakhstan but are still protected in their country of origin.

In 2001 Kazakhstan adopted the Law on Integrated Circuits and joined the 1971 Strasbourg Agreement on International Patent Classification, the 1957 Nice Agreement on International Classification of Goods and Services for Trademark Registration and the 1977 Budapest Agreement on International Recognition of Microorganisms Deposits for the Purposes of Patent Procedures. The Kazakhstani Parliament has yet to pass the Law on Commercial Secrets. Kazakhstan has signed but has not yet ratified the 1997 WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Kazakhstan enacted several key intellectual property rights laws in 1999: a new Trademark Law, a Law on Selective Achievements, and a new Patent Law. The current Law on Copyrights, which dates from 1996, protects software as literary works and databases as compilations. However, there is no known criminal *ex parte* search procedure, which is necessary to provide effective enforcement against end-user pirates. In addition, there is nothing in the Criminal Code or the Criminal Procedures Code to provide police with the proper *ex officio* authority to commence criminal copyright cases. In 1999, Kazakhstan also amended its Customs Code to provide for the seizure at the border of objects that violate intellectual property rights. Customs rules and regulations are currently being developed to

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implement these articles of the Customs Code. Meanwhile, there is little border protection for the importing or exporting of illegal material, and illegal sound recordings (especially CDs) are being imported, particularly from Russia and China.

In the past two years, a number of stores have started selling legal copies of copyrighted products, yet these sales are still several times lower than those of illegal copies. Lax enforcement of intellectual property remains a significant problem, and levels of piracy are high. Moreover, the lack of automation in customs processing impedes efficient operation. Gaps in knowledge and training on the part of those responsible for enforcing intellectual property rights pose still another obstacle to enforcement. Public understanding of the principles of authors' rights is low, as is public support for enforcement of intellectual property rights.

INVESTMENT BARRIERS

Any company involved in mining or oil and gas production, including the wholly government-owned company KazakhOil, must comply with local content requirements that were enacted in August 1999 but have not yet been fully implemented. Draft regulations to implement these requirements acknowledge that U.S. firms are exempted from the domestic content requirement by the provisions of the 1994 Bilateral Investment Treaty.

In accordance with the 2001 Law on Land, the following types of land plots cannot be held through private ownership: agricultural land, defense industry land, specially protected territories, forests and springs, communal use lands, and uninhabited areas. Foreign firms can obtain leasing rights to land only through a domestic partner and only for a maximum of 49 years. Moreover, when foreign firms lease agricultural land, the lease cannot exceed 10

years. Foreign companies and joint ventures cannot transfer agricultural land to a third party "for secondary use" (i.e. for sublease).

Kazakhstani authorities often require, as part of a foreign firm's contract with the government, that foreign investors contribute to social programs for local communities.

Foreign insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. The total registered capital of banks with foreign participation is less than 25 percent of the total registered capital of all banks in Kazakhstan. Foreign ownership of individual media companies is limited to 20 percent.

The difficulty in obtaining work permits for foreign investors' employees in Kazakhstan is an ongoing problem. The government introduced a regulation in 1999 limiting the number of foreign workers in Kazakhstan to 7,000. When the quota was reached in 2000, many foreign companies were unable to obtain work permits for foreign specialists and managers. In 2001 the number of work permits was increased to 10,500, and exceptions were made for investors' lead representatives. However, any such arbitrary cap runs the risk of disrupting the operations of foreign investors in Kazakhstan.

OTHER BARRIERS

There are other structural barriers to investment in Kazakhstan, including a weak system of business law, a lack of an effective judicial process for breach-of-contract resolution, and an unwieldy and corrupt government bureaucracy. Many companies report significant logistical difficulties serving the Kazakhstani market. In addition, there are specific hindrances to U.S. companies that are doing business in Kazakhstan, licensing requirements for simple business activities and a burdensome tax

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monitoring system.

